

IN THE CIRCUIT COURT OF
CHARITON COUNTY

STATE OF MISSOURI ex rel.)	
JEREMIAH W. (JAY) NIXON, and the)	
the MISSOURI DEPARTMENT OF)	
NATURAL RESOURCES and the)	
MISSOURI CLEAN WATER)	
COMMISSION,)	
)	
Plaintiff,)	
)	
vs.)	Case No. _____
)	
HAMPTON FEEDLOT, INC.,)	
)	
Defendant.)	

CONSENT JUDGMENT AND ORDER OF INJUNCTION

WHEREAS, Plaintiff, State of Missouri, on behalf of the Missouri Clean Water Commission and the Missouri Department of Natural Resources (“the Department”), filed a petition herein alleging that Defendant, Hampton Feedlot, Inc. (“Hampton Feedlot”) violated and continues to violate the Missouri Clean Water Law, Chapter 644, RSMo, and the Missouri State Operating Permit ("MSOP") issued to it by plaintiff; and

WHEREAS, plaintiff and defendant have consented, without trial or adjudication of any issue of fact or law herein, to the entry of this Consent Order;

NOW THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

1. The Court has read plaintiff's petition and has been fully advised of its premises. The Court is satisfied that the provisions of this Consent Judgment amicably

resolves the issues cognizable under §§ 644.006 to 644.141, RSMo, and the Court finds that this Consent Judgment does protect the public interest.

2. For purposes of this Consent Judgment, this Court has jurisdiction over the subject matter of this action and over the parties consenting hereto pursuant to Chapter 644, RSMo.

3. The Provisions of this Consent Judgment shall apply to and be binding upon the parties executing this Consent Judgment, their officers, agents, successors and assigns.

4. This Consent Judgment fully resolves the State's and the Department's claims against Hampton Feedlot, its officials, employees and agents, including claims for civil penalties and injunctive relief for violations of the Missouri Clean Water Law at Hampton Feedlot's facility as contained in plaintiff's Petition. This Consent Judgment establishes a construction schedule for modifications to Hampton Feedlot's confined animal feeding operation ("CAFO"), establishes requirements for the operation of Hampton Feedlot's CAFO in addition to those requirements contained in Hampton Feedlot's Missouri State Operating Permit, and establishes penalties for past violations and stipulated penalties if Hampton Feedlot fails to adhere to this Consent Judgment or violates the Missouri Clean Water Law and relevant regulations for all future operations.

5. Hampton shall, at all times, apply for, obtain and comply with the terms and conditions of its then existing Missouri State Operating Permit and the provisions of the Missouri Clean Water Law and implementing regulations.

CONSTRUCTION SCHEDULE

6. Hampton Feedlot shall complete a program of improvements to its CAFO so as to assure that this facility shall meet with all applicable limitations, parameters and requirements of its applicable Missouri State Operating Permit.

7. On September 6, 2002, Hampton Feedlot was issued Construction Permit No. 3170 to construct modifications to its CAFO. The completion of the improvements and modifications to Hampton Feedlot's CAFO shall be conducted and completed pursuant to the requirements of Construction Permit No. 3170 and shall be completed and in operation within one hundred eighty (180) days of the entry of the Judgment.

INTERIM REQUIREMENTS

8. On or before November 1, 2003, defendant Hampton Feedlot shall reduce the level of wastewater in all of its storage lagoons to maximum pumpdown levels, which is the one hundred eighty (180) day storage design. Hampton Feedlot shall promptly notify the Department in writing upon the completion of the reduction of wastewater in the lagoons to maximum pumpdown levels and shall furnish the Department with an outline of the pumpdown and land application procedures and methods used to reduce the wastewater levels. In no event shall the provisions of this paragraph relieve Hampton

from liability for any discharge of wastewater from the lagoons to waters of the state subsequent to the entry of this Judgment.

9. Hampton Feedlot shall perform all future land applications of wastewater in an environmentally protective manner, in accordance with the Best Management Practices and in accordance with all conditions contained in its MSOP No. MO-G010110.

10. Defendant shall mow the tops, inslopes, and outslopes of the lagoon berms, settling basins, and holding cell before the end of June, August and October of each calendar year (3 mowings a year) in order to allow routine inspections of the integrity of the structures and to deter burrowing animals. Defendant shall keep a record of all such mowings for Department inspection.

11. Within ninety (90) days of the entry of this Judgment, defendant shall submit to the Department, for Department approval, an Operation and Maintenance Manual (“O&M Manual”), pursuant to the requirements outlined in *Manual 121*, published July, 1989, by the Missouri Department of Natural Resources.

12. Within ninety (90) days of the entry of this Judgment, defendant shall develop and implement a plan, which shall be incorporated into Hampton’s O&M Manual, for monitoring the irrigation piping system to minimize the likelihood of future leaks and ruptures. In the event a leak or rupture occurs a response plan shall also be developed and incorporated into Hampton’s O&M Manual.

13. Hampton Feedlot shall immediately and properly dispose of any dead cattle on its premises pursuant to all Missouri Department of Agriculture rules and regulations, including the requirement to dispose of any and all dead cattle within 24-hours of their expiration. Within ninety (90) days of the entry of this Judgment, Hampton Feedlot shall develop a Mortality Disposal Plan, which shall be incorporated into defendant's O&M Manual.

14. Within thirty (30) days of the entry of this Judgment, Hampton Feedlot shall submit to the Department all rainfall data since May 24, 2002, and all Land Application System – Operational Monitoring records for 2002. Defendant shall keep all rainfall records updated and onsite and available for Department inspections and said requirement shall be incorporated into Hampton Feedlot's O&M Manual.

15. Within thirty (30) days of entry of this Judgment, defendant shall remove one of the depth markers in the large lagoon serving its CAFO. The remaining lagoon level marker in the large lagoon shall be repaired within thirty (30) days of entry of this Judgment so that the wastewater level in the lagoon can be accurately and consistently measured. Said marker shall identify the upper and lower operational levels of the lagoon. Within forty-five (45) days of entry of this Judgment, Hampton Feedlot shall provide the Department in writing with the name of the agency or individual that performed the survey to correctly align the marker in the large lagoon.

16. Within thirty (30) days of entry of this Judgment, defendant shall modify the berm of the large lagoon to ensure that any discharges from the large lagoon flow through the emergency spillway, rather than over the large lagoon's berm. Within forty-five (45) days of entry of this Judgment, Hampton Feedlot shall provide the name of the agency or individual that assisted in raising the berm. In no event shall the provisions of this paragraph relieve Hampton from liability for discharges of wastewater from any of its lagoons, subsequent to the entry of this Judgment.

17. On or before April 1, 2003, Hampton Feedlot shall prepare and initiate an updated and detailed Operation and Nutrient Management Plan which shall be incorporated into Hampton Feedlot's O&M Manual. Said Operation and Nutrient Management Plan must be submitted and approved by the Department on or before April 1, 2003. Hampton Feedlot shall comply with the terms of the Operation and Nutrient Management Plan.

18. On or before March 1, 2003, Hampton Feedlot shall construct an emergency spillway for its small lagoon, install a marker that accurately identifies the upper and lower operational level of the small lagoon and shall supply the Department with the name of the agency or individual that performed said spillway construction. In no event shall the provisions of this paragraph relieve Hampton from liability for discharges of wastewater from the small lagoon subsequent to the entry of this Judgment.

19. On or before March 1, 2003, Hampton Feedlot shall construct permanent main wastewater lines to properties owned by Hampton Feedlot in the Southwest 1/4 of Section 8 and to those properties owned by Deer Ridge Farms in the Northeast 1/4 of Section 7, all properties of which are in Township 54 North, Range 20 West.

20. On or before March 1, 2003, Hampton Feedlot shall land apply all wastewater in the emergency temporary basin and shall modify said emergency temporary basin so as to become a secondary contaminant basin in accordance with CP# 3170.

21. On or before April 1, 2003, Hampton Feedlot shall employ and permanently maintain an employee with Level A Certification, through the Department's CAFO Certification Program, for all future operations.

22. Upon approval of this Court, the State of Missouri agrees to subordinate its Judgment Lien to Consensual Liens proposed to be granted by Hampton to obtain financing for improvements to its facilities as described herein.

PENALTIES

23. As and for civil penalties for the violations referred to in plaintiff's Petition, Hampton Feedlot shall deliver to the Harry D. Bozoian, Assistant Attorney General, P.O. Box 899, Jefferson City, MO 65102, a check made payable to the "Treasurer of Chariton County as Custodian of the Chariton County School Fund" in the amount of Twenty Thousand Dollars (\$20,000.00) within thirty (30) days of the entry of this Judgment. A Sixty Thousand Dollar (\$60,000.00) civil penalty is hereby suspended on the condition

that defendant Hampton Feedlot does not discharge water contaminants (as that term is defined in Chapter 644, RSMO) into unnamed tributaries of Salt Creek, Salt Creek, or any other waters of the State of Missouri in violation of the Missouri Clean Water Law and its implementing regulations in the future. In the event that defendant discharges water contaminants (as defined in Chapter 644, RSMO) into unnamed tributaries of Salt Creek, Salt Creek, or any other waters of the State of Missouri in violation of the Missouri Clean Water Law and its implementing regulations in the future, the Sixty Thousand Dollar (\$60,000.00) civil penalty shall be due and payable within fifteen (15) days of written demand by the Attorney General or the Department. Payment of said stipulated penalty shall be in addition to other remedies and sanctions available to plaintiff by reason of Hampton Feedlot's failure to comply with this Consent Judgment or the Missouri Clean Water Law and its implementing regulations.

GENERAL TERMS

24. This Consent Judgment is not and shall not be interpreted to be a permit, or a modification of existing MSOP or National Pollution Discharge Elimination System ("NPDES") permits, nor shall it in any way relieve Hampton Feedlot of its obligation to obtain MSOP permits or NPDES permits, and comply with the requirements of its current MSOP and NPDES permits or with any other federal or state law or regulations. Any new permits, or modifications of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

25. The plaintiff does not, by its consent to the entry of this Judgment, warrant or aver in any manner that Hampton Feedlot's complete compliance with this Judgment, will result in compliance with the provisions of the Law, or in compliance with a MSOP permit issued to Hampton Feedlot. Hampton Feedlot shall remain solely responsible for compliance with the terms of this Judgment, and its MSOP permits.

26. Until termination of the provisions of this Consent Judgment, the Department and its agents for the State of Missouri shall have authority to enter the CAFO covered by this Judgment, at all times, upon proper presentation of credentials to the highest ranking employee present on the premises for the purpose of:

- A. monitoring the progress of activity required by this Judgment;
- B. verifying any data or information submitted to the Department in accordance with the terms of this Judgment, and
- C. obtaining samples, and, upon request, splits of any samples taken by the defendant or its consultants.

This provision in no way limits, expands or otherwise affects any right of entry held by the plaintiff pursuant to applicable federal or state laws, regulations or permits.

27. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders relative to enforce this Judgment or the law, if violations of this Judgment or Missouri statutes pertaining to water pollution or water quality occur or continue to occur at any CAFO or facility owned, operated or controlled by Defendant.

28. Each party shall bear its own costs and attorneys fees in this action.

Defendant shall pay court costs.

29. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Judgment and to resolve disputes arising hereunder as may be necessary or appropriate.

30. This Consent Judgment shall terminate upon the payment of the sums provided for herein, the completion of the modification to Hampton Feedlot's CAFO pursuant to Construction Permit No. 3170, and upon defendant achieving compliance with the terms of MSOP No. MO-G010110 and the Missouri Clean Water Law and relevant regulations for period of two (2) years following the entry of this Judgment.

WE HEREBY CONSENT to the entry of this Judgment:

HAMPTON FEEDLOT, INC.

JEREMIAH W. (JAY) NIXON
Attorney General

By: _____
JOHN M. PERRY
President, Hampton Feedlot, Inc.

By: _____
HARRY D. BOZOIAN
Assistant Attorney General

Date: _____

Date: _____

MISSOURI DEPARTMENT OF
NATURAL RESOURCES

By: _____
SCOTT B. TOTTEN, DIRECTOR
Water Protection and Soil
Conservation Division

Date: _____

IT IS SO ORDERED, ADJUDGED AND DECREED.

CIRCUIT JUDGE

Date: _____